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NO. 84-492

IN THE

SUPREME COURT OF THE UNITED STATES

October 1984 Term

MELVIN ARRINGTON, JR.

PETITIONER

VERSUS

STATE OF MISSISSIPPI

RESPONDENTS

On Petition for Certiorai to the Supreme Court of the United States from the Supreme Court of Mississippi

# PETITION FOR CERTIORAI

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15 pp

## PETITION FOR CERTIORAI

a. The specific question presented for review is whether or not the verdict of the Coroner's Jury may be introduced into evidence in a criminal case on the testimony of the coroner alone.

b. Melvin Arrington, Jr., and the State of Mississippi are the only parties to this action.

c. Table of Contents


| | Page |
|---|---|
| Table of Contents | 1 |
| Questions presented for review | 1 |
| Parties | 1 |
| Reference to Case Report | 2 |
| Grounds on which Jurisdiction is invoked. | |
| (i.) Date of Judgment | 2 |
| (ii) Date of Order on Rehearing | 2 |
| IV. Statute conferring Jurisdiction on this Court | 2 |
| The Constitutional Provision which the case involves | 3 |
| A statement of case | 3-4 |

Argument 5

Appendix 8-14

Certificate 15

Table of Authority

Blackwell v. State, 166 Miss. 524, 142 So. 628(1933)
Jones v. California 364 F. 2d 522(9th Circuit)
Missouri v. Davis, 491 S.W. 2d 549
State v. Berry, 324 So. 2d. 822
State v. Joiner, 161 La. 518, 109 So. 51
Wiley v. State, 449 So. 2d, 756.

d. This matter was not designated for publication; however a copy of the decision is attached.

e.

(i) The decision sought to be reviewed was rendered and entered February 8, 1984.

(ii) A Petition for Rehearing was denied July 11, 1984. No extension of time has been granted by this Court.

IV. Jurisdiction is invoked pursuant to 28 U.S.C. 1257(3) this being a request for review of a Judgment of a State Court of last resort.

f. Certiorai is requested to review the Mississippi Supreme Court's ruling of a Criminal Court issue arising under Amendment VI of the United States Constitution.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

g. This case arose from an indictment returned by the Grand Jury of the Second Judicial District of Jones County, Mississippi charging the petitioner, Melvin Arrington, Jr. with the crime of Murder. Apparently, a fight ensued, following which one Willie James Jackson lay dead in the streets of Laurel,

Mississippi.

This matter was tried before a Jury and the first trial ended in a mistrial when all jurors were unable to agree on a verdict. A second trial resulted in a verdict of guilty of Manslaughter. This matter was then appealed to the Mississippi Supreme Court where the verdict was affirmed.

h. During the trial, it became apparent that the pathologist who performed the autopsy was unavailable to testify and a County Coroner was called to give testimony to establish the cause of death. This coroner was allowed to state the verdict of the coroner's jury over objection. This objection was argued as grounds for reversal before the Mississippi Supreme Court in Appellant's Brief and Assignment of Error. The Mississippi Supreme Court ruled that this was error but harmless error. A copy of this decision is attached.

## ARGUMENT

The petitioner, Melvin Arrington, Jr. brings to this Court the question of whether or not he can be denied his right to cross examine each witness offered against him. During the trial of this cause in Jones County, Mississippi, it became apparent that Dr. Sergio Gonzales, a local pathologist, would not be available for Court. The County coroner, one Joyce Peret, was called to the stand and testified, over objections, that she empaneled a coroner's jury of six persons neither being in Court and they determined that the cause of Willie James Jackson's death had been gun shot wound to the chest. This was argued to the Mississippi Supreme Court as being violative of the Confrontation Clauses of the Mississippi and United States Constitution.

The law in our State tend to be that this testimony is inadmissable Blackwell v. State

166 Miss. 524, 528, 142 So. 628, 629(1933).

Wiley v. State 449 So. 2d 756(Miss 1984). However, the Court found in the case at Bar and Wiley that this admission was harmless error.

The State of Louisiana has ruled that the process verbal and report of Pathologist and coroner are admissable as competent evidence of death, at least where no confrontation rights are denied by the failure to allow cross examination of an expert whose opinion is incorporated therein. State v. Berry 324 So. 2d. 822. State v. Joiner 109 So. 51, 161 La. 518. Similar rulings has been had in The United States Court of Appeals 9th Circuit, Jones v. California 364 F. 2d. 522, The State of Missouri, Missouri v. Davis, 491 S. W. 549.

In as much as the 6th Amendment to the United States Constitution guarantees a person the right to confront and cross examine

all witnesses against him, there should be no exception here. This is an area of law where this Court should reconcile the conflicts and determine whether the hearsay testimony, a number of person and a coroner's jury should be allowed to come in against a person without his being able to examine either of them. To allow the law to continue to be applied as presently invites case by case changes and therefore unequal protection of the law. This should be either allowed or not allowed.

We offer to the Court that this was improper and therefore, the case should be reversed and remanded for a trial free of this tainted evidence.

IN THE

SUPREME COURT OF MISSISSIPPI

NO. 54,070

MELVIN ARRINGTON, JR.

VS.

STATE OF MISSISSIPPI

NOT DESIGNATED FOR PUBLICATION

| | |
|---|---|
| COURT FROM WHICH APPEALED: | CIRCUIT COURT, JONES COUNTY |
| TRIAL JUDGE: | JAMES D. HESTER |
| ATTORNEYS: | FOR APPELLANT: JOHN H. ANDERSON |
| | FOR APPELLEE: MARVIN L. WHITE, JR. |
| CHARGE AND SENTENCE: | MANSLAUGHTER 18 YEARS |
| DISPOSITION: | AFFIRMED |

BEFORE PATTERSON, C. J., PRATHER & ROBERTSON, CHIEF JUSTICE, FOR THE COURT:

In the Circuit Court of the Second Judicial District of Jones County,

Melvin Arrington, Jr. was indicted and tried for murder. He was convicted of manslaughter and sentenced to serve a term of eighteen (18) years in the custody of the Mississippi Department of Corrections.

On appeal, Arrington contends the trial court erred when it:

(1) overruled defendant's motion for a change of venue;

(2) allowed the state to introduce into evidence testimony of the coroner's jury; and

(3) refused instructions D-6 and D-25.

On the night of June 4, 1981, Mary Ann Jackson was out walking in Laurel with her daughter, Rose Ann Simmons; her son, Willie James Jackson; and Willie James' girlfriend, Virginia Cosey. They passed the house where Mrs. Jackson's daughter, Lorene Arrington, lived with her husband, Melvin Arrington, Jr.

Arrington came outside to his car and took out a gun which he put into his pocket. At this time Lorene Arrington left the house and joined her family on the street. As the party continued to walk down the street, Arrington approached them and instructed his wife to return home with him. When she refused, Arrington began to choke her, prompting her brother, Willie James Jackson, to ask Arrington to stop. A scuffle between Jackson and Arrington ensued. Testimony from Mary Ann Jackson, Rose Ann Simmons and Virginia Cosey revealed that when the fighting stopped, Arrington took his gun out of his right pocket and fired at Jackson six times. Jackson was hit in the stomach and in the chest and died at the scene.

Arrington testified he lost consciouness or went into a state of shock, and that he did not realize that the gun had gone off until someone told

him he had shot Jackson.

Arrington first contends his motion for change of venue was erroneously denied.

This Court has held many times that the ruling on a defendant's motion for change of venue in a criminal case is within the discretion of the trial court and is not reversible absent a clear abuse of that discretion. Irving v. State, 361 So. 2d 1360, 1369 (Miss. 1978); Saucier v. State, 328 So. 2d 355, 257 (Miss. 1976). A corollary to this principle is the rule that where defendant makes a prima facie case for change of venue and the motion is denied, this Court will look at the entire record to determine whether defendant received a fair trial. See Harrigill v. State, 381 So. 2d 619, 622 (Miss. 1980).

We find no indication in the record that the denial of the motion was an abuse of judicial discretion; nor

do we find any showing that Arrington was prejudiced thereby. Therefore, our opinion is this assignment of error is without merit.

Arrington next argues that the Court erred in allowing testimony of the verdict of the coroner's jury. Such a verdict is not admissable in evidence on the trial of a defendant charged with murder. Blackwell v. State, 166 Miss. 524, 528, 146 So. 628, 629 (1933). However, based on our analysis in William Wiley v. State, no. 54,642, (Miss., decided January 4, 1984, not yet reported), our opinion is the allowance of the verdict of the coroner's jury was harmless error. See also, Goldman v. State, 406 So. 2d 816, 820 (Miss. 1981). Other evidence established that Jackson's death was caused by a gunshot wound, and Arrington himself does not dispute this fact. Further, Arrington waived his objection to the competency of the

coroner's testimony through his extensive cross-examination of her. Rhymes v. State, 356 So. 2d 1165, 1169 (Miss 1978).

Finally, Arrington argues that the court erred in refusing two jury instructions which stated essentially that the killing of a human being is "excusable when comitted by accident and misfortune."

We are of the opinion these instructions were unsupported by evidence and therefore properly denied. Pittman v. State, 297 So. 2d 888, 893 (Miss. 1974). No testimony, including Arrington's supports the theory that the shooting occurred by accident or misfortune.

Finding no reversible error, we affirm the conviction and sentence.

AFFIRMED.

WALKER, P. J.; BROOM, P. J.; ROY NOBLE LEE; BOWLING; HAWKINS; DAN LEE; PRATHER; AND ROBERTSON, JJ., CONCUR.

MINUTES

SUPREME COURT OF MISSISSIPPI

MARCH TERM, 1984

WEDNESDAY, JULY 11, 1984,

COURT SITTING : : : : : :

MELVIN ARRINGTON, JR.

VS. CAUSE NO. 54,070

STATE OF MISSISSIPPI

THIS CAUSE THIS DAY came to be heard on the Petition For Rehearing and this Court having sufficiently examined and considered the same en banc and being of the opinion that the same should be denied doth order that said Petition be and the same is hereby Denied.

## CERTIFICATE OF SERVICE

I, John H. Anderson, a member of the Bar of the United States do hereby certify that I have caused three (3) true and exact copies of the above and foregoing Petition for Certiorai to be served on the Honorable Marvin White, who represented respondents in the prior proceedings had in this matter at his usual and last known mailing address.

Dated at Hattiesburg, Forrest County Mississippi, this the 10th day of September, A. D., 1984.

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